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Opinions under the Hindu Law of Inheritance Act

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GJT. 2 3036. 5 cc.

LEGAL DEPARTMENT.

The Collector's order is correct. Shri Chunibhai Vaghibhai being the sister's son would be the heir of the deceased Chaturbhai Shankarbhai (See section 2 of the Hindu Law of Inheritance (Amendment) Act, 1929).

Sd/- .....

Additional Secretary to Government

U.R. to R.D. No. 9886, dated the 6th June 1951.

GJT. 29.6.1 4 cs

Office of the R.L.A.

The suggestion made by the High Court in special No. 576 of 1949 from Kolhapur is to apply the Bombay Herediatry Offices Act to the area comprising the former State of Kolhapur in order to remove the confusion and ambiguity created by the Vat-Hukums which were issued by the Kolhapur State. It is also suggested that the Kolhapur Code of Hindu Law, which is continued in force, should be repealed and the principles of Hindu Law, as in force in the Bombay State proper, may be applied. Both the suggestions have been made without appreciating the real situation. The question of the application of laws to merged States was dealt with in the Political and Services Department and the correct position in this matter should have been ascertained from the Department, before making such proposal. Land tenures in the merged States are not binding on the Bombay State unless they are recognised. Watans are a part of the land tenures and the Vat-Hukums in Kolhapur relate to Watans and other alienations. It was reported that some of these grants are not of hereditary nature. Revenue Department has appointed a special officer to inquire into the incidents of these tenures in order to enable Government to decide how in accordance with the Agrarian Reform policy initiated in the Bombay State, theland tenures in

the merged States can suitably be liquidated. If in applying Bombay Laws to the merged States, the Bombay Hereditary Offices Act had been applied, alienations in the nature of Watans or service-inams in the merged States like Kolhapur would have received recognition as hereditary grants. With this object in view the Bombay Hereditary Offices Act has not been applied to ay of the merged States.

2. As regards the application of the principles of Hindu Law in force in the Bombay State, it should have been realised that Hindu Law as in force in the Bombay State proper has not been codified. These principles very from place to place according to various schools and also according to customs or usages prevalent there. The Hindu Code Bill is already before Parliament an d is expected to be passed into law. That Code will make the law uniform in the whole country. It was also realised that if the Kolhapur Hindu Code was not recognised, and had to be repealed, in the absence of any Hindu Law as codified to replace it, the Hindu Law in Kolhapur would have been in an uncertain state and it would have been claimed that the residents there were governed by these very rules on the ground of long standing usage and custom. This suggestion appears to have been also made without realising its impracticability and

implications.

Sd: J.R. Dhurandhar.

12/6.

Remembrancer of Legal Affairs.

U.O.R. to H.D. No. 9313, dated the 13th June 1951.

GJT. 29.6.

Office of the R.L.A.

On the suggestion of the Bombay High Court in appeal No. 576 of 1949, to repeal the Kolhapur Rules (Digest) of Hindu Law, 1920, and to extend the principles of Hindu Law, as in force in the Bombay State, the question was considered by the R.L.A. in his opinion No. 9313, dated 13-6-1931, where he opined:-

"As regards the application of the principles of Hindu Law in force in the Bombay State, it should have been realised that Hindu Law as in force in the Bombat State proper has not been condified. These principles vary from place to place according to various schools and also according to oustoms or usages prevalent there. The Hindu Code Bill is already before Parliament and is expected to be passed into law. That Code will make the law uniform in the whole country. It was also realised that if the Kolhapur Hindu Law in Kolhapur would have been in an uncertain state and it could have been claimed that the residents there were governed by these very rules on the ground of long standing usage and customs."

These observations will equally apply to the proposal to repeal the Baroda Hindu Act. In the circumstances, the proposal to repeal these Acts cannot be countenanced at all and may await the enactment of the Hindu Law pending before the Central Legislature.

U.R. to P.S.D. No. 12438, dated the 3rd August 1951.

Sd: J.R. Dhurandhar, 2/8.
Remembrancer of Legal Affairs.

GJT. 29.6. 4 cs.

Legal Department.

Lands-Surat
Heirship
inquiry.

Shri Budhia Naran is the Son's son of the paternal aunt of the deceased, Shri Vallabh, (Vide page 117, case pp.) and is thus an Atma Bandhu. A Bandhu is entitled to inherit the property on failure of sapindas and samanodakas who are nearer heirs (cf. Mulla's Hindu Law, 10 th Ed. p. 48). As no nearer relative has come forward to claim the property there is no objection to recognise Shri Budhia Naran as the heir of the deceased.

Sd/- .....

Additional Secretary to
Government.

U.R. to R.D. No. 16075, dated the 19th October 1951.

Legal Department.

Submitted.

2. Please see the letter of the Secretary, Bombay State S.S. and A Board, Poona.

It appears that a cash posthumus reward of Rs.7500/- has been sanctioned for gallantry in the field to the decorse L/Hav. Venkatrao Chavan I.B.M. The decoree has left behind his widow Shrimati Laxmibai who is the receipient of a family pension of Rs. 16/- per month. He has also left behing his father, mother and a brother. The father of the decores, as well as his widow have now claimed the amount, of the reward. In this case the D.G.P., Belgaum, has expressed the following opinion:-

" During the life time of the widow of the deceased decoree she has a right to enjoy as already indicated by me, the amount as her "widow's estate" i.e. the income derived from the same. She is however entitled to the amount for the enjoyment of the same in the manner referred to. If she tries to dispose of the said amount without any legal necessity it is for the reversionees to take steps about the same to prevent her from doint so. The amount, may in the meanwhile, be handed over to her as the legal heir of the deceased decoree.

The father of the brother of the deceased cannot have any control over the corpus during the life time of the widow.

The R.L.A. is requested to advise whether the view taken by the D.G.P., Belgaum is correct.

Legal Department.

Seen and returned.

The view taken by the District Government Pleader, Belgaum is correct (see subsections (1) and (3) of section 3 of the Hindu Women's Rights to Property Act, 1937).

Under Government Resolution, Home Department (Political) - War - No. S.D IV/1139, dated the 21st September 1944 the amount however would be held by the Bombay Provincial Sailors', Soldiers' and Airmen's Board in Trust for the widow of L/Hav. Venkatrao and the question of spending away the corpus by the widow would not arise.

Sd/- .....

Additional Secretary to Government.

U.R. to H.D. No. 16494, dated the 17th October 1951.

GJT. 30.6. 4 cs.

2. The facts of the case are as follows:-
The facts of the case as stated by the Distfict Deputy Collector, Chikodi Division are not quite very intellegible.
It is stated that the Bhagirthibai, widow of Govind Kulkarni, had taken in adoption a son in 1914 with the previous sanction of the then Sar Subha of Kolhapur and the adoOted son died in 1946 leaving behind him a widow and that Bhagirthibai had made requests in 1930 and 1943 for adoption of a second son but these requests were refused. Now it appears that if the first adopted son lived till 1946 there was no need for her to request for adoption of a second son either in 1930 or 1942. It is therefore presumed that the first adopted son died leaving a widow before 1930. Sadashiv, the second adopted son was adopted by her without the previous sanction of the Sarsubha, sometime before her death in 1944. This Sadashiv applied to the Kolhapur authorities for Ex - post facto sanction to his adoption and the question is now before this Government, and the applicant has cited the secision in I.L.A. 1941 Nagpur 178 in support of his claim for adoption. The Collector of Kolhapur in his report considers that the

second aption was invalid as Bhagirthibai's power to adopt a son had come to an end on the adoption of the first son who is dead. Relying on R.L.A's opinion No. 12543, dated, 1st Sept., 1950, the Under Secy. to R.D. considers that Bhagirthibai was not entitled to exercise the right to adopt as it had once been passed on to her dauthter in-law. The R.L.A. is requested to advise.

GJT. 30.6. 4 cs

Office of the R.L.A.

Hindu Law

Adoption by widow in Kolhapur.

Seen and returned.

2. The view taken by the Under Secretary Revenue Department is correct. The adoption of Shri Sadashiv by the widow Bhagirathibai being in itself invalid, the question of Government giving ex-post facto sanction to the adoption does not arise.

Sd/ J.R. Dhurandhar.
24/10.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 17000, dated the 25th October 1951.

GJT. 30.6.4 cs.

Office of the R.L.A.

It is open to a Hindu to disinherit his daughter and to leave his self-acquired property to his male heirs only. (See Mulla's Hindu Law, 10th edition page 151).

Sd: J.R. Dhurandhar.

4/12.

Remembrancer of Legal Affairs.

U.R. to P. & S.D., No. 19526, dated the 5th December 1951.

GJT. 30.6. 4 cs.